

REMARKS

This is in response to the Office Action of April 5, 2005.

DOUBLE PATENTING

The Examiner has provisionally rejected Claims 1-10 under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claim 6 of co-pending application 10/709,779. The Examiner states that the claims are not identical and further states that they are not patentably distinct from each other because it is an obvious variation of the claimed invention. The rejection is provisional since the conflicting claims have not in fact been patented. Applicant is willing to execute a terminal disclaimer to overcome this particular provisional rejection although arguments could be made that the rejection is inappropriate.

DRAWINGS

The drawings have been objected to under 37 CFR 1.18(a). The Examiner states that the circular wire base of Claim 10 must be shown or the feature cancelled from the claims. Claim 10 has been cancelled since it is obvious that the invention with a circular base could be used for deep-frying. Therefore, no change to the drawings is necessary.

CLAIM OBJECTION

Claims 6-9 have been objected to under 37 CFR 1.75(c) as being in improper form because multiple dependant claims should refer to other claims in the alternative only. Accordingly, applicants have amended these claims to conform with the requirements of 37 CFR 1.75(c). The claims have not been further treated on the merits but now are in condition for treatment on this basis and should be considered patentable. Independent Claim 1 is noted as containing allowable subject matter.

CLAIM REJECTIONS—35 U.S.C. 112

Claim 10 has been rejected as failing to comply with the written description requirement. Applicants have cancelled Claim 10 in order to eliminate the rejection under 35 U.S.C. 112.

Claims 1-4 have been rejected under 35 U.S.C. 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the invention. Applicants have amended Claim 1 to provide the antecedent basis for the upper portions as suggested by the Examiner.

CLAIM REJECTIONS—35 U.S.C. 102

Claim 5 has been rejected under 35 U.S.C. 102(b) as being anticipated by Reed. Reed is alleged to disclose a rectangular wire base but in reviewing the drawings, no such rectangular wire base is disclosed. The patent relates to a convertible geometric structure and has nothing to do with applicants' wire rack for grilling chicken legs. Further, the device contains no handle and the various structures shown in Reed's drawings are very different from that described in applicants' claim. Consequently, Reed could not be used in applicants' environment nor was it ever intended to do so. Thus, Reed proposes a structure, which cannot serve as an anticipation of applicants' unique wire rack for grilling chicken legs.

ALLOWABLE SUBJECT MATTER


The Examiner has stated that independent Claim 1 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. 112 second paragraph as set forth in this action. Accordingly, applicants have amended Claim 1 as suggested as well as the other claims where necessary. The claims and the specification to overcome any objections and rejections set forth by the Examiner

CONCLUSION

Claim 10 has been cancelled and Claim 1 with allowable subject matter has been amended. Independent Claim 5 has also been amended as well as the dependent claims. Claims

1-9 should be allowable. Reconsideration and allowance of the application is respectfully requested.

RESPECTFULLY SUBMITTED,


RICHARD A. JOEL
Attorney for Applicant
Reg. No. 22212

Dated: June 28, 2005